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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,738	09/20/2005	Akihisa Inoue	043197	8319

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WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW
SUITE 700
WASHINGTON, DC 20036

EXAMINER	
WYSZOMIERSKI, GEORGE P	

ART UNIT	PAPER NUMBER
1793	

MAIL DATE	DELIVERY MODE
11/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/525,738	INOUE ET AL.
	Examiner	Art Unit
	George P. Wyszomierski	1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 2* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 2* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *2/28/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claim Interpretation

1. The last several lines of instant claims 1 and 2 recite features that "can be" present in the inventive material. The examiner will give the claims their broadest reasonable interpretation, i.e. will not treat the claims as limited to materials that include these features.

2. Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how Applicant defines the term "Cu-based" in the instant claims. Generally, an alloy is based on the element that makes up the majority of its contents. If there is no majority element, then the alloy is based on the element comprising the highest percentage of the alloy. In the present case, the alloy may be as much as 50% Ti or Zr, and must further comprise at least 2% Al or Ga. That would leave the maximum remainder (the Cu) at 48%, and it would not appear that such an alloy would be "Cu-based" as the term is generally understood in the art. Clarification is required as to what is required in a Cu-based alloy as claimed.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Inoue et al. (U.S. Patent 5,980,652) or over WO00/26425.

The Inoue patent and the WO '425 document disclose amorphous alloys (i.e. up to 100% amorphous in Inoue claim 2, at least 90% amorphous in the Abstract of WO '425) comprising amounts of copper, zirconium, and aluminum, and may further comprise nickel, titanium, palladium or platinum, all in amounts overlapping the amounts defined in the instant claims. The prior art alloys have a ΔTx value as presently claimed, and are produced in a thickness of 1 mm or more. The prior art does not disclose any specific examples that match all of the compositional limitations as claimed, and does not specify all of the properties in the last three lines of instant claims 1 and 2. However,

a) The overlap in composition between the prior art and the instant claims renders the claimed compositions obvious, because the prior art teaches the utility of the alloys disclosed therein over the entire disclosed range of the prior art. Compare *In re Malagari* (182 USPQ 549).

b) With regard to properties, because the prior art compositions may be the same as those presently claimed, and appear to be made by substantially similar processes, it is a reasonable assumption that any resultant properties are likewise the same in either the prior art or the present invention.

Thus, a prima facie case of obviousness is established between the disclosures of Inoue et al. '652 or WO '425 and the presently claimed invention.

5. Claims 1 and 2 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 7,056,394. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant claims and claim 2 of the '394 patent are directed to amorphous alloys which may contain copper, zirconium, aluminum, and one or more of the optional "M", "T", or "Q" elements of instant claim 2. The '394 claim indicates that these alloys have a high ΔT_x value and a thickness of 1 mm or more. The '394 claim requires the presence of beryllium, while this is merely an optional element in the instant claims. However, the substantial overlap in composition between the alloys of the '394 claim and those presently claimed would render the presently claimed alloys obvious from a reading of the '394 claim.

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

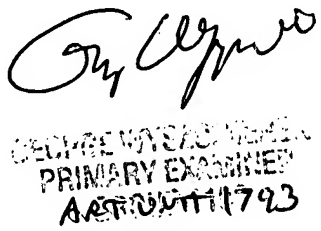
A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Wyszomierski whose telephone number is (571) 272-1252. The examiner can normally be reached on Monday thru Friday from 8:00 a.m. to 4:30 p.m. Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King, can be reached on (571) 272-1244. All patent application related correspondence transmitted by facsimile must be directed to the central facsimile number, (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



GPW
November 6, 2007